

UNITED STATES OF AMERICA :  
 :  
 v. : CRIMINAL COMPLAINT  
 :  
 : Mag. No. 05-3134 (PS)  
 THE UNIVERSITY OF MEDICINE :  
 AND DENTISTRY OF NEW JERSEY :

I further state that I am a Senior Special Agent with the Department of Health and Human Services, Office of Inspector General, and that this complaint is based on the

following facts:

See **ATTACHMENT A.**

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Eric Rubenstein  
Senior Special Agent  
Department of Health and Human Services  
Office of Inspector General

Sworn to before me and subscribed in my presence,  
on December 29, 2005, at Newark, New Jersey

HONORABLE PATTY SHWARTZ  
UNITED STATES MAGISTRATE JUDGE

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Signature of Judicial Officer

## ATTACHMENT A

I, Eric Rubenstein, a Senior Special Agent with the Department of Health and Human Services, Office of Inspector General, having conducted an investigation and having spoken with other individuals, have knowledge of the following facts:

1. At all times relevant and material to this Complaint:
  - a. The University of Medicine and Dentistry of New Jersey (“UMDNJ”) owned and operated University Hospital (“UH”), located in Newark, New Jersey. Hereafter, UMDNJ and UH will be referred to jointly as UMDNJ.
  - b. University Physician Associates of New Jersey (“UPA”) was the Faculty Practice Plan of UMDNJ and New Jersey Medical School (“NJMS”). The Faculty Practice Plan was the organization that billed for, collected, and distributed the clinical receipts to the faculty of NJMS.
  - c. Medicaid, established by Congress in 1965 under Title XIX of the Social Security Act, was a joint federal and state health care program that provided medical assistance based upon financial need. Medicaid was also a “health care benefit program” as set forth in Title 18, United States Code, Sections 24(b) and 1347.
  - d. Medicare was a federal health program promulgated under Title XVIII of the Social Security Act that provided payment for health care services primarily to the elderly. Medicare was also a “health care benefit program” as set forth in Title 18, United States Code, Sections 24(b) and 1347.
  - e. A cost report was the annual report required of all institutions participating in the Medicare and Medicaid programs. The cost report recorded each institution’s total costs and charges associated with providing services to all patients, the portion of those costs and charges allocated to

Medicare and Medicaid patients, and the Medicare and Medicaid payments received.

2. In or about May 2001, a UH employee responsible for Medicaid and Medicare billing discovered, in a meeting with a physician and a member of UMDNJ's legal department, that both physicians (through UPA) and UH (via its cost reports) were billing the Medicaid program and being reimbursed for the same expenses, namely physician services in outpatient clinics. The UH employee promptly notified her supervisor, a senior manager of UH, who in turn promptly notified UMDNJ's Legal Department.

3. UMDNJ's Legal Department retained a New Jersey law firm (the "Law Firm") to address the double-billing issue. In or about late May 2001, UMDNJ Legal Department staff wrote several memoranda concerning the issue for the Law Firm. In or about December 2000 the same Law Firm had been retained to work on a larger, strategic issue of "reforming the relationship" between UPA and UMDNJ.

4. Between in or about July to December 2001, an attorney of the Law Firm issued three drafts and a final opinion on the double-billing issue. These drafts were received by attorneys in UMDNJ's Legal Department. In the attorney's legal analysis he noted that:

In the instant case, UH has no agreement with the physicians to bill for their professional services. On the other hand, the faculty physicians have an employment contract with NJMS which expressly authorizes UPA to bill and collect for all clinical practice by faculty physicians (See Exhibit A). This arrangement is further confirmed in an Affiliation Agreement dated October 10, 1990 between NJMS and UPA creating a faculty practice plan (the "Plan"). (See Exhibit C). Also, as the result of litigation between the NJMS and UPA, the Superior Court of New Jersey found that the Affiliation Agreement and the physician employment contract provide that it is not NJMS that is authorized to bill and collect fees for professional service rendered by the clinical faculty members but rather UPA, the successor to the Faculty Practice Service. The court also found that this was a bargained for result. (See Exhibit D).

Final Legal Opinion Issued December 20, 2001 “RE: University Hospital Outpatient Cost Report Issue.”

5. In his first two drafts, the attorney of the Law Firm concluded that the hospital (1) “must disclose to the Medicaid fiscal agent the overpayment received in the cost reports for FY 2000 physician services of \$1.2 million”; and (2) “should not submit the same physician costs for the UH Clinics in FY 2001 or thereafter until . . . UH and UPA . . . negotiate a ‘Carve out’ of the physician billing for UH clinics which will be done by UH.” The attorney reiterated that “UH must disclose to the Medicaid fiscal agent the FY 2000 overpayment, hopefully in a way that would limit discussion to that cost report.”

6. In or about July 2001, an attorney from the Law Firm called Medicaid on a “no-name basis” seeking advice generally concerning whether a hospital can claim on its cost reports physician costs incurred in an outpatient hospital clinic. The attorney did not disclose to Medicaid that UMDNJ and UPA were billing for the same physician services in UH outpatient clinics.

7. Further, the attorney from the Law Firm never met with UPA to discuss the billing issue or to obtain their interpretation of the Affiliation Agreement, or other documentation and legal opinions governing the parties’ respective rights to bill. In addition, the attorney from the Law Firm never recommend that UMDNJ sue UPA for breach of the Affiliation Agreement. He also did not recommend that UMDNJ notify Medicaid of UPA’s billing activities.

8. In his final December 2001 legal opinion, the attorney for the Law Firm recommended that: (1) “UH representatives should meet with UPA representatives to discuss the double payment for professional service issue. At a bare minimum, UH should insist that UPA cease billing Medicaid and managed Medicaid payors for hospital-based physician services provided in UH clinics and for which reimbursement is covered on UH cost reports. Language of clarification should be added to the faculty physician employment contract concerning the Patient Service Component and cost-based reimbursement. UH may continue to seek reimbursement for physician costs documented and incurred in the appropriate UH clinic cost centers”; and (2) “UH and UPA may wish to negotiate a ‘Carve Out’ for UH to bill physician services (other than Medicaid) in the UH clinics.” With respect to disclosure to Medicaid, the attorney stated that “UH can take the position that this reporting obligation does not apply to it because UH was not overpaid for its costs in the UH clinics nor did it receive an inappropriate payment . . .

While UH may not have a legal duty to report this situation to the Medicaid fiscal agent, at a minimum, it should make UPA aware of the double payment problem, so that steps can be taken to avoid it.”

9. After the attorney for the Law Firm issued his final opinion in or about December 2001, the investigation has revealed that neither UMDNJ nor the Law Firm made any attempt to get UPA to stop billing, and that UMDNJ continued to bill Medicaid, via its cost reports, for the same physician services performed in outpatient clinics.

10. In or about early 2002, another attorney for the Law Firm was actively working on the issue of reforming the contractual billing relationship with UPA. At no time did this attorney disclose the double billing issue to the UPA attorney. Rather, the Law Firm attorney drafted a “breach letter” which was sent to UPA in or about May 2002. The letter listed five alleged bases for breach of the Affiliation Agreement between UPA and UMDNJ – the outpatient billing issue was not one of them.

11. A mediation began between UMDNJ and UPA to address the issue raised in the breach letter described above. The Law Firm represented UMDNJ in the mediation which began in or about the summer of 2002 and ended unsuccessfully in early 2004. At no time during the mediation did UMDNJ raise the Medicaid double billing issue.

12. In or about December 2003, for the first time, a member of the Legal Department at UMDNJ called into question the conclusions reached two years earlier in the Law Firm’s final December 2001 opinion.

13. In or about January 2004, the billing issue remained unresolved and a UH employee responsible for Medicaid billing learned that both UMDNJ and UPA were continuing to bill Medicaid for physician services conducted in the outpatient clinics. This employee reported this issue to senior management at UMDNJ.

14. In or about February 2004, the December 2001 Law Firm opinion was forwarded to counsel for UPA for the first time. In response to the December 2001 opinion, counsel for UPA sent a letter in or about March 2004 to the Legal Department

at UMDNJ stating that it was UPA's position in all respects that UPA and only UPA could bill Medicaid fee-for-service.

15. In or about the Spring of 2004, the Legal Department at UMDNJ retained another law firm ("the second Law Firm") to revisit the double-billing issue.

16. In or about April 2004, for the first time since the billing issue was raised three years earlier, an attorney in the Legal Department at UMDNJ advised UH senior management that if UH was going to claim the outpatient clinic physician costs on the cost reports, there must be a "contract between the physicians and the hospital which, at a minimum, sets forth the physician's agreement to forego billing for providing services for which they are, without such an agreement, entitled to bill."

17. In or about April or May 2004, the second Law Firm concluded that the hospital must have an agreement with the physicians in order to claim the physician costs in the outpatient clinics on the cost reports because "the government does not want to pay twice for the same service."

18. In or about November 2004, UH management notified the Division of Medical Assistance and Health Services of New Jersey that UH and the physicians in the hospital's outpatient clinics had billed Medicaid for the same services.

19. At no time prior to November 2004, did any member of UMDNJ senior management instruct any UMDNJ employee to stop billing Medicaid for the physician services conducted in the outpatient clinics. Similarly, at no time prior to November 2004 did any member of UMDNJ's senior management notify Medicaid of the double billing.

20. At no time did any UMDNJ employee insist that UPA stop billing Medicaid for physician services conducted in UH's outpatient clinics. Nevertheless, from approximately in or about May 2001 until approximately in or about November 2004, UMDNJ continued to submit cost reports to Medicaid seeking reimbursement for these physician services. These physician costs were reimbursed to UMDNJ by Medicaid. By the above means, UMDNJ knowingly and willfully submitted numerous fraudulent cost reports to Medicaid through which UMDNJ received improper Medicaid reimbursements of at least \$4.9 million.